

From: warren havens [warrenhavens@mac.com]
Sent: Friday, January 23, 2009 9:17 PM
To: marlene.dortch@fcc.gov
Cc: 'jstobaugh Stobaugh'; Warren Havens
Subject: Fwd: RE: Reply to Opps, Petition for Recon, DA 08-2614

Attachments: THLetalRply2OppsRecon.doc.wps

Dear Secretary,
(Marlene dot Dortch at fcc dot gov)

I tried to file the attached on ECFS today before Midnight a number of times. I filled out the ECFS filing sheet properly, and I then selected the attached file to upload, but would not upload: the dialog box stated that I needed to select Word, PDF, etc. format. But I had properly selected Word format, which is used for the attached file, but the system would not accept the upload. I think is may be due to the attached filing being a World (DOC) format and readable by Word, it was composed in Microsoft Works and thus may not appear to be a Word readable document. I also selected the other text file type, ASCII, hoping that would accept the upload, but it did not.

Thus, I am filing this by email to you.

Since the system rejected the filing prior to midnight, right before I looked up your email address and composed this email to you, it should be accepted as filed before midnight. As shown below, I provided a copy to the Parties by email.

I will convert the file now to PDF then attempt to file that on ESFS. However, I have to access another computer to do that in another office and it will take twenty or so minutes.

I will file a copy of this email on ECSF with the above noted PDF version, assuming ECFS accepts said uploads.

Sincerely,
Warren Havens
for Petitioners

- - - - -

>From: "warren havens" <warrenhavens@mac.com>
>To: "Olcott, Bruce A." <BOlcott@ssd.com>
>Cc: "jstobaugh Stobaugh" <jstobaugh@telesaurus.com>, "Warren Havens"
><warren.havens@sbcglobal.net>, <johnston@lojlaw.com>, <grb@baplaw.com>,
><bpeirce@infospeeddata.com>
>Date: January 23, 2009 09:03:39 PM PST
>Subject: RE: Reply to Opps, Petition for Recon, DA 08-2614
>
>
>
>
>
>On Friday, January 23, 2009, at 08:08PM, "Olcott, Bruce A." <BOlcott@ssd.com>
>wrote:
>>No attachment.

>>Sorry,
>>Bruce
>>
>>-----Original Message-----
>>From: warren havens [mailto:warrenhavens@mac.com]
>>Sent: Friday, January 23, 2009 11:05 PM
>>To: Olcott, Bruce A.; johnston@lojlaw.com; grb@baplaw.com;
>>bpeirce@infospeeddata.com
>>Cc: 'jstobaugh Stobaugh'; Warren Havens
>>Subject: Reply to Opps, Petition for Recon, DA 08-2614
>>
>>Parties,
>>Please see attached Reply.
>>
>>Thank you,
>>
>>Warren Havens
>>President
>>Skybridge Spectrum Foundation
>>Telesaurus Holdings GB LLC
>>& Affilates
>>
>>Parties:
>>
>>Progeny LMS LLC
>>Squire, Sanders & Dempsey L.L.P.
>>Bruce A Olcott Esq
>>1201 Pennsylvania Avenue, NW, Suite 500 Washington, DC 20004 ATTN
>>Bruce Olcott bolcott@ssd.com
>>
>>PCS Partners LP
>>Lampert, O'Connor & Johnston, P.C.
>>E. Ashton J Johnston Esq
>>1776 K Street NW, Suite 700
>>Washington, DC 20006
>>johnston@lojlaw.com
>>
>>Borsari & Paxson
>>George R Borsari Jr. (counsel to FCR, Inc. and apparently Helen Wong
>>Armijo) 4000 Albemarle St., N.W., Suite 100 Washington, DC 20016 [No
>>email on ULS. The following is from the Firm's website:
>>grb@baplaw.com.]
>>
>> Helen Wong Armijo
>>William D Peirce
>>7819 Northwoods Drive
>>Sugar Land, TX 7747
>>Email:bpeirce@infospeeddata.com , and grb@baplaw.com
>>
>>
>>
>>
>
>

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of Grant of waivers to M-LMS geographic licensees to extend the construction deadlines: Order, DA 08-2614, Released 11.26.2008 Lead Application File Nos. for PCS Partners, L.P & Progeny LMS, LLC Requests for Extension of Time Lead Call Signs for Helen Wong-Armijo re: Request for Extension of Time Lead Call Signs for FCR, Inc. re: Request for Extension of Time	 WT Docket No. 08-60 NPRM 06-49 File Nos. 0003469981 & 0003422772 Call Signs: WPTH955 and WPTI200 Call Signs: WPOJ871 and WPTH901
--	--

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau

Reply to Oppositions to
Petition for Reconsideration
or in the Alternative Section 1.41 Request

Skybridge Spectrum Foundation (“Skybridge”) and Telesaurus Holdings GB, LLC (“Telesaurus”), each M-LMS licensees, Warren C. Havens (“Havens”), and several undersigned affiliates (together, “Petitioners”) hereby reply to the Progeny LMS, LLC (“Progeny”) and PCS Partners, L.P. (“PCS”) oppositions (together, the “Respondents,” and the “Oppositions”) to Petitioners’ requests for reconsideration and modification (“Requests”) of aspects of the above captioned Order (the “Order”) under FCC rule section 1.106, and to the degree any part of this request is not responded to under said rule, then under section 1.41 (the “Petition”).

While separate replies could be filed, for convenience of FCC staff and the parties, we

used one reply, and consider page length accordingly. Herein, “Oppositions” and “Respondents” mean either or both Oppositions and Respondents as the context of the text below and the Oppositions provides.

In sum, the Requests should be granted since they are required under applicable law, cited in the Petition, since grant is in the public interest for reasons given therein, and since the Oppositions did not refute the particular reasons and authorities given in the Petition for the Requests. The Oppositions only generally recited that the Order is adequate as it is, and attempted to mischaracterize the Petition as a person interest filed by an individual, “Havens,” and for special business plans of companies he manages. However, the Petition was submitted by Skybridge and Telesaurus for their respective reasons, and based on the just noted relevant law and public interest.¹

Regarding one Request, Progeny suggests that it is obvious what is meant by commercially available equipment but then gives a considerable definition. However, all that is obvious is that Progeny does not know what is meant by the term, since it had to fashion a long definition and hope the FCC accepts it: it could not and did not cite any FCC definition in rules or by a FCC or Court decision as to what this term, central to the Order’s rationale, means. The Request on this matter should be granted, for the specific reasons given in the Petition.² A party

¹ The Responders take issue with the Petition describing defects in the Progeny and PSC Partners licenses. It is always in the public interest for a party with knowledge of violations of FCC rules and defective licenses to bring the issue to the attention of the agency. It is appropriate to do so at times when the licenses either change hands or control, or are extended. A separate motion is not required. The Order noted that its decision was without prejudice to Petitioner’s charges against the Progeny licenses and Progeny, and it did not state that pursue by the Petitioners of that matter could not be before the FCC in a petition with regard to the Order or in relation to the NPRM or other proceeding. Petitioners, by addressing these matters in the Petition, do not waive rights to pursue the matters in appropriate court action, or in a formal motion before the FCC on these matters, or both. The FCC can of course, on its own motion, pursue the matters and use information provided by Petitioners to date, and additional information they can provide on request or at a hearing.

² On this issue, which involves equipment, as the Petition noted the only equipment

seeking to play by the rules wants clarity. A party that wants wiggle room does not. That is the situation here. Also, rules and policies under rules must be clear to be legally effective, and to avoid waste of the agency's time and the time of parties seeking to comply: that is a principal well established in administrative law and related court precedents.

Responders do not support the relief sought in the Requests and thus should not be provided any relief granted under the Petition. Rather, Responders suggest different reasons, none on-point or persuasive, as to why the Petitioners are pursuing at best private interest, that are not their interests. It is not in the public interest to thrust upon licensees relief they do not seek or which they in any form oppose. In addition, with regard to the LMS licensees who did not comment on the Petition, after being served a copy, they also should not be granted any relief under the Petition for the same reasons. The Petitioners included two distinct legal entities who each hold nearly nationwide LMS A block licenses, Skybridge and Telesaurus. They separately and jointly support the Requests and should be granted the relief sought. Of all the M-LMS licenses, the FCC and other public records are clear that they are the only ones active in developing technology, equipment, and plans to M-LMS (Exhibits hereto provide certain other, current, information in this regard, and regarding the compelling need for M-LMS for ITS) and doing so for the FCC's entirely sound reasons for allocating and licensing this spectrum. The

required is multilateration equipment. Here again, Progeny asserts with no citing of authority, what any person involved in multilateration and pseudolites knows is patently false, the in Progeny's understanding, pseudolites won't work in M-LMS due to needing more bandwidth etc. Progeny suggests that Petitioners should have cited reasons why Progeny is not correct. Petitioners have included in the NPRM many references, and include them in their websites, as to what pseudolites are, based on leading authorities, including experts in the University of California under contract with Petitioners. In short, the term pseudolites means no more, in current usage, than terrestrial multilateration, using GPS or non-GPS spectrum, by which an object can be located by GPS like methods: "pseudo satellites" or pseudolites. There not requirement as Progeny "understands" to use 20 Mhz or any particular bandwidth. Some use large multiples of that: see, e.g., the Novariant sodalities (check OET equipment authorizations) and some use far less than in any M-LMS license. For example, Glonass does not use wideband CDMA but narrow (sub 1 Mhz) bandwidth per each satellite, and FDMA. The same can be used

other licensees simply assert unsupported allegations, that are transparently incorrect to anyone involved in radio location, as to why ITS use of M-LMS will fail, GPS has obviated it, etc.³ They lack any credibility to challenge Skybridge and Telesaurus on any M-LMS licensing issues. Skybridge and Telesaurus wished there was not the case: they invited these entities to be active in developing M-LMS for ITS. Telesaurus donated 1/3 of its M-LMS spectrum permanently, for no consideration, to Skybridge so that core ITS uses could be provide to the public at no charge. Skybridge, a nonprofit, must by law look to the public interest and has not private ownership of any kind.⁴

Contrary to suggestions by Respondents, Skybridge and Telesaurus are not pursuing by Requests private interests for their unique business plans, but are (i) seeking appropriate well-

for M-LMS pseudolites. In any case, this matter of pseudolites is not central to the Requests.

³ As indicated in the cover email by Petitioners to transmit a copy of the Petition to the other M-LMS licensees, Petitioners intend to commence appropriate court action(s) with regard to these licensees repeated deliberate false and misleading statements in relation to M-LMS and ITS. Such statements are not sheltered from appropriate injunctive and damage claims in court by the fact that they were used in a Federal agency proceeding. Courts have determined that they have jurisdiction, as has the FCC. Court determinations in these matters may be brought to the attention of the FCC or may directly affect M-LMS licensing matters at the FCC. Petitioners legal counsel at several firms have studied and brief these matters. The main point of mentioning this here is that the Order and the Petition turn upon the NPRM and matters therein, and Petitioners are not willing to continue to be subject to these other M-LMS licensees false and misleading statements in and related to the NPMR and the manipulation attempted thereby, which to date has in large part succeeded before the FCC, since it causes serious damages to their nonprofit and commercial business, and to the public interest purposes of FCC licensing, especially the ITS purpose of M-LMS under Subpart M of Part 90.

⁴ Skybridge would like to see all M-LMS well used for ITS in the public interest, and to see vigorous competition in that (where competition, vs. cooperation, is required or most healthy for this public interest). Telesaurus seeks the same and always has. In past years, Telesaurus repeatedly asked, including by in-person meetings, the owner(s) and representatives of Progeny, FRC, and Helen Wong Armijo ("HWA") (and representative of PCS Partners also, but to a lesser degree based on a restricted proceeding) to be active in M-LMS development, and cooperate where it is healthy for this development, and otherwise compete. After initial showings of interest, eventually none agree to or did take any such action. They lack credibility as serious licensees pursuing clear Commission mandates for M-LMS licensees to pursue ITS radio services based on multilateralism for the specific ITS programs and goals described the Commission in some hundreds of pages, and described in thousands of pages in well know ITS industry documentation from US DOT, State DOTs, ITS America and other well known sources.

explained clarifications based on prevailing legal standard, and simple modifications to make the Order's relief and rationale more sound and effective, (ii) to benefit the high public interest purposes the FCC set for M-LMS, in fact, for all LMS, and for all ITS radio services under Subpart M of Part 90. Skybridge, a nonprofit holding all licenses solely for public benefit purposes, and Telesaurus, which has, from first obtaining LMS licenses, made clear in FCC, NTIA, and other public filings and records its dedication of its LMS licenses for ITS high-public interest purposes, separately and jointly pursue use of their LMS licenses solely for high public interest purposes. This is further discussed in Exhibits hereto.

Respectfully submitted,

[\[Submitted Electronically. Signature on File\]](#)

Warren C. Havens,
Individually and as President of
Telesaurus Holdings GB LLC and
Skybridge Spectrum Foundation
And as President of their affiliates,
Telesaurus VPC LLC
AMTS Consortium LLC
Intelligent Transportation & Monitoring Wireless LLC

2649 Benvenue Ave., Suites 2 -6
Berkeley, CA 94704

Ph: 510-841-2220
Fx: 510-841-2226

Executed January 23, 2009

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Reply to Oppositions to Petition for Reconsideration was prepared pursuant to my direction and control and that all the factual statements and representations contained herein, attributed to me as author of the Reply, are true and correct.

[Submitted Electronically. Signature on File.]

Warren C. Havens

January 23, 2009

Certificate of Service

I, Warren Havens, certify that I have, on this 23 day of January 2009, caused to be served by placing into the USPS mail system with first-class postage affixed (with email copies also provided to the below email addresses), a copy of the foregoing Reply to Oppositions to Petition for Reconsideration to the following:⁵

Progeny LMS LLC
Squire, Sanders & Dempsey L.L.P.
Bruce A Olcott Esq
1201 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20004
ATTN Bruce Olcott
Email:bolcott@ssd.com

PCS Partners LP
Lampert, O'Connor & Johnston, P.C.
E. Ashton J Johnston Esq
1776 K Street NW, Suite 700
Washington, DC 20006
Email:johnston@lojlaw.com

Borsari & Paxson
George R Borsari Jr. (counsel to FCR, Inc. and apparently Helen Wong Armijo)
4000 Albemarle St., N.W., Suite 100
Washington, DC 20016
[No email on ULS. The following is from the Firm's website: grb@baplaw.com.]

Helen Wong Armijo
William D Peirce
7819 Northwoods Drive
Sugar Land, TX 7747
Email:bpeirce@infospeeddata.com , and grb@baplaw.com

[Filed Electronically. Signature on File.]

Warren Havens

⁵ The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

Exhibit

The Exhibits will be separately filed. They involve the following program, among other things.

The below is included here, in the case that more complete exhibits are not allowed as untimely. Otherwise, the below will be replaced by more complete exhibits. The below, by the links shown and material in them, and the text (from a communication among parties involved in the project, indicate the importance of ITS wireless and high accuracy location (HALO) for ITS, which M-LMS can fulfill.

HALO ITS PROJECT

>>

>>1. The project is a proposal for funding to US DOT FHWA EAR in response to the item in the link below on high accuracy location ("HALO") for ITS.

>> - EAR generally: See:

>> - <http://www.fhwa.dot.gov/advancedresearch/about.cfm>

>> - This HALO project: See:

>> - <http://www.fhwa.dot.gov/advancedresearch/baa.cfm> (see "next gen vehicle location")

>> -

<https://www.fbo.gov/index?tab=core&s=opportunity&mode=form&id=bd812311031109d66aafc73ceaff2610&cck=1&au=&ck=> (see the broad agency proposal full text: I attach a copy here also).

>> - In sum, high accuracy vehicle location, with high reliability, along most of the US roads, cannot be provided by GPS-GNSS alone, or by that with currently available and deployed augmentation alone. Other techniques and deployments are needed. Once this is solved and deployed, "intelligent" US land transportation systems (and extended to maritime and other transport) will be able to direct flow of vehicle precisely spaced in lanes and along lanes with far less congestion, accidents, pollution and use of fuel. The same system would also direct vehicle to lane segments that will have embedded electric power to be picked up by electric drive vehicles (and other that draw on batteries, such as compressed-air vehicles (TATA is a leader in that). This will provide major improvement in US industry, quality of life, energy, independence and environment. Few infrastructure improvements will match the benefits and the cost/benefits in my view. Many other benefits would be provided to transport and other sectors, including back up of GPS-GNSS which can be easily jammed and spoofed and which is increasing critical to many US industries for both location and timing.

>>

>>2. Related larger program and vision: "i-TELES" (intelligent and integrated Transportation, Energy, Location and Environment Systems) in my companies concept, and the similar "AET" (Automated Electric Transportation) described more recently by certain transport and energy research groups.

>> - Related in key aspects to this HALO project described above, is the vision and program of AET, which is similar to what I have for years described in our telesaurus.com website and various government filings as i-TELES. AET is described at: <http://energylab.usu.edu/htm/about/research/aet>.

>> - I note AET / i-TELES here to show what I believe is the broader context of the HALO project: the context

being that HALO (or high accuracy location) is needed for many of the AET or i-TELES functions to work, mostly, to guide vehicles along highways with precise spacing in lanes and along the roadway to reduce congestion, accidents, pollution and use of fuel, and to guide vehicle to pick up electric power that can be embedded in the roadways (for electric drive, and compressed-air vehicles, etc.).

>>

>>3. As you can see from the project description materials noted in item 1 above, the first phase grant is for about \$700,000: our proposed budget will be over \$1,000,000 dollars with cost sharing contributions by my companies (some cash, and in-kind use of spectrum, etc.)

>> - In addition, we plan to seek alternative and supplemental funding from private foundations, if the FHWA grant is awarded, or if it is not. In my view, the FHWA project can provide very useful seed money and impetus to consolidate efforts in HALO (and i-TELES / AET) among researchers and companies with various expertise and interests needed; however, far larger sums (in total of cash and in-kind contributions) will be needed to complete the contemplated work and be ready for operational deployments.

>> - There will be some other entities submitting competing proposals, we expect and have heard. We believe that the PATH proposal, with support indicated above from our companies and others, is compelling and may have unique advantages. One is that we have FCC licensed spectrum nationwide (6 MHz in lower 900 MHz, and 1-2+ MHz in lower 200 MHz) for many of the needed or most useful location techniques, and for related needed two-way voice and data, and fixed-site links.

>>--OBAMA ADMINISTRATION and CONGRESS STRONGLY BACK ITS--

>>

>> - As an important part of needed economic recovery, and infrastructure and environment improvement, the new Obama Administration and parties in Congress recognize and intend to back and fund Intelligent Transportation System programs. See, e.g., <http://appropriations.house.gov/pdf/RecoveryReport01-15-09.pdf> , and the new page on "Obama ITS : ITS Now" at (in a few days) www.telesaurus.com which will have additional links and documents from US DOT, ITS America, etc.

>> - This HALO project, and AET / i-TELES, are fundamental to ITS for reasons noted herein.

>> - Thus, in addition to this particular proposal for this FHWA HALO research, the developers of the proposal (PATH, our companies, Savari Networks, etc.) will pursue funding and support opportunities resulting from the above noted recognition.

>

>>- End

>>

>